CHAN HOH v. THAM KUM & ANOR.

[A.Cr.J. (Raja Azlan Shah J.) May 22, 1968]
[K.L. — Criminal Appeal No. 6 of 1967]

Criminal Law and Procedure — Immovable property — Dispute as to, which was likely to cause breach of peace — Forcible dispossession — Whether actual force necessary to constitute 'forcible dispossession' — Criminal Procedure Code (Cap. 6), s. 99 (iv)(a).

The appellant was the chief tenant of certain premises which was used by the respondents for the running of their sundry goods business. The appellant sent the respondents several notices to quit, but the respondents did not vacate the premises. On the evening of December 8, 1967, after the respondents had left for home, the appellant took possession of the premises by instructing his two sons to lock the place from within and without and to sleep therein. The next day, the respondents found that they could not enter the premises. Inspite of repeated requests, the appellant's sons refused to allow them to enter the premises. The respondents did not offer any resistance. They reported the matter to the police, and filed a complaint at the magistrate's court. After having satisfied himself that a dispute likely to cause a breach of the peace existed between the two parties in respect of the premises, the magistrate ordered an enquiry. It was held at the enquiry that 'the acts of closing inside and outside the said premises and asking the two sons of the appellant to sleep therein were more than sufficient to constitute wrongful and forcible dispossession'. By virtue of the provisions of section 99(iv)(a) of the Criminal Procedure Code, the magistrate made an order declaring that the respondents were entitled to retain possession of the premises and that the parties were to keep the peace until the matter was disposed of by a civil court. In an appeal from this order, the appellant contended that actual force should be used before there could be forcible dispossession under section 99(iv)(a) of the Criminal Procedure Code.

Held, dismissing the appeal: in order to constitute forcible dispossession under section 99(iv)(a) of the Criminal Procedure Code, it is not necessary that actual force be used on any person. Forcible dispossession may be effected by a show of criminal force sufficient to intimidate those in possession and to deter them from offering any resistance.

Cases referred to:—

(1) *Bihari Lal* v. *Emperor*, A.I.R. 1934 Lahore 454.

(2) *Sitanath Shaha Bhowmic* v. *Harvey*, A.I.R. 1921 Cal. 553.

(3) *Amritlal N. Shah* v. *Nageswara Rao*, A.I.R. 1947 Madras 113.

(4) *S. M. Dakhan* v. *Madholal*, A.I.R. 1953 Ajmer 74.

CRIMINAL APPEAL.

Tan Seng Kee for the appellant.

Balwant Singh for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an appeal against a declaration order made by the learned magistrate under section 99(iv)(a) of the Criminal Procedure Code in respect of a certain part of premises at No. 54, Petaling Street, Kuala Lumpur (hereinafter referred to as the said premises) The facts are fully set out in the judgment of the learned magistrate, and I will endeavour to summarise them here as briefly as possible.

The two respondents and the appellant were partners in a sundry goods business at the said premises from February 26, 1946 until February 26, 1966 when it closed down. The respondents carried on with the business after the partnership was officially dissolved on August 4, 1967. The appellant, as chief tenant, allowed the respondents to remain in the said premises under clause 17 of the partnership agreement at a monthly rental of $243 until October 1967, but refused to accept any more rent which was tendered thereafter. After the respondents had left for home on the evening of December 1967 the appellant took possession of the said premises by instructing his two sons to lock up the place from within and without and to sleep therein. On December 9, 1967 the respondents found that they could not enter the said premises which they said contained $1,500 worth of their own goods. In spite of repeated requests the appellant's sons refused to discuss the matter with them. They seemed helpless and did not offer any resistance. They then lodged two reports with the police and subsequently filed a complaint at the Kuala Lumpur magistrate's court. On December 19, 1967 the learned magistrate issued a preliminary order, having satisfied himself that a dispute likely to cause a breach of the peace existed between the two parties in respect of the said premises. At the enquiry held on December 21, 1967 the appellant stated that he had acted as he did because the partnership had been dissolved on August 4, 1967, the respondents had no right to the said premises, and they had refused to quit despite having been served with several notices through his solicitors.

In those circumstances the learned magistrate was satisfied that the respondents, within the two months next before the date of the preliminary order, were forcibly and wrongfully dispossessed from the said premises by the appellant. Without going into the merits of either party's claim to the said premises he concluded that:—

> "The acts of closing inside and outside the said premises and asking the two sons of the appellant to sleep therein are more than sufficient to constitute wrongful and forcible dispossession."

By virtue of the provisions of section 99(iv)(a) of the Criminal Procedure Code he therefore treated the respondents as being in actual possession at the date of the preliminary order and declared that they were entitled to retain possession of the said premises and the parties were to keep the peace until the matter was disposed of by a civil court of competent jurisdiction.

The two main grounds of appeal are (1) the learned magistrate's finding of forcible dispossession was not based on the evidence, (2) the learned magistrate had not directed his mind to the consideration of the question of actual possession without reference to the merits of either party's claim to the said premises.

In my opinion ground (2) merits no consideration. It is clear from the judgment that the learned magistrate had decided the issue of actual possession without reference to the merits of either party's claim to the said premises.

I now revert to ground (1). Whilst admitting there was wrongful dispossession, it was suggested on the authority of *Bihari Lal* v. *Emperor* [1] that no forcible dispossession existed. It was held in that case that force contemplates the presence of the person using the force and of the person to whom the force is used. In my view that case does not afford any assistance to the appellant as it was decided under the provisions of section 522 of the Indian Criminal Procedure Code which corresponds to section 412 of our Criminal Procedure Code and reads:—

"(i) Whenever a person is convicted of an offence attended by criminal force and it appears to the court that by such force any person has been dispossessed of any immovable property, the court may, if it thinks fit, order such property to be restored to the possession of the person who has been dispossessed.

(ii) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit".

It is necessary to review certain Indian decisions with regard to the construction of the provisions of section 145 of the Indian Criminal Procedure Code which corresponds to section 99 of our Criminal Procedure Code. The first case is *Sitanath Shaha Bhowmic* v. *Harvey.*[2] In that case one "H" was in possession of certain land. In his absence, a large body of men numbering about thirty who were armed with implements which might be used for offensive as well as for peaceful purposes, came upon the land in question and effectively dispossessed "H" by surrounding the land on all sides with a fence. The court held that to constitute forcibly dispossession:—

"No actual force or violence need be used. When the dispossession is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resistance, the latter are said to have been forcibly dispossessed".

The other case is that of *Amritlal N. Shah* v. *Nageswara Rao.*[3] The facts are that the petitioner who was in possession through his servants had been evicted by notice issued by a magistrate obtained on an incorrect representation. It was held that it is not in all cases that actual force should be used before there could be forcible dispossession under section 145(iv) of the Criminal Procedure Code:—

"Misrepresentation and improper threats besides there are sufficient to constitute forcible dispossession and there were these in this case".

Those cases were referred to with approval in *S. M. Dakhan* v. *Madholal.*[4] In that case the respondents entered the *nohra* illegally and forcibly and did not leave it despite requests and protests.

The result of these authorities is clear. In order to constitute forcible dispossession under section 99(iv)(a) of the Criminal Procedure Code it is not necessary that actual force or violence should have been used on any person. When the dispossession is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resistance, the latter are said to have been forcibly dispossessed. Misrepresentation and improper threats are also sufficient to constitute forcible dispossession.

In the present case the respondents came face to face with the appellant's sons who, in spite of repeated requests by them, refused them entry into the said premises. The respondents offered no resistance. Instead, they lodged two reports with the police and subsequently filed a complaint with the magistrate. In my view the reasonable inference to be gathered from the facts is that there was a show of force by the appellant's two sons which was sufficient to intimidate the respondents and deter them from re-taking possession. For these reasons I am of the opinion that the appeal ought to be dismissed. The reasons which I have given do not differ in substance from the ground which commended itself to the learned magistrate.

Appeal dismissed.

Solicitors: *Athi Nahappan & Co.; Singh Bros.*

ONG AH GOH v. KUAN KEH LAN & ORS.

[O.C.J. (Chang Min Tat J.) May 24, 1968]
[Ipoh — Civil Suit No. 68 of 1966]

Probate and Administration — Intestate having business in Malaya dying intestate in China — Domicile of intestate — Who are entitled to share in estate — Application of Chinese law in Malaya.

Chinese law — Succession — Intestate — Daughter's right to share in estate — Perak Order in Council No. 23 of 1893.

Succession — Intestate succession to estate of Chinese — Domicile of deceased — Order for administration — Executor de son tort — Limitation — Laches and acquiescence.

The deceased, whose domicile of origin was China, died intestate leaving a share in a partnership business. The deceased came to Malaya in 1913 and became a partner in a trading business in Seremban. In 1916, the deceased returned to his family house in China where his wife and children lived. He came back to Seremban a few months later with his eldest son. In 1917, the deceased fell ill and returned to China where he died in 1918. In 1924, the partners in the trading business equally divided the deceased share in the partnership property between his two sons.

The plaintiff, a daughter of the deceased, commenced proceedings in 1966, as administratrix of the estate of the deceased for the administration of the estate. She claimed *inter alia* for a declaration that the share in the partnership property which she alleged had fallen into the hands of her two brothers as a result of their inter-